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12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA  
14 SAN JOSE DIVISION  
15

16 UNILOC USA, INC. and  
17 UNILOC LUXEMBOURG, S.A.,

18 Plaintiffs,

19 v.

20 APPLE INC.,

21 Defendant.  
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CASE NO. 5:19-cv-01692-EJD

**AGREED PROTECTIVE ORDER  
REGARDING THE DISCLOSURE  
AND USE OF DISCOVERY  
MATERIALS**

Re: Dkt. No. 81

MODIFIED BY THE COURT

1 Plaintiffs, Uniloc USA, INC. and UNILOC LUXEMBOURG, S.A. (“Plaintiffs”), and  
2 Defendant, Apple Inc. (“Defendant”), anticipate that documents, testimony, or information  
3 containing or reflecting confidential, proprietary, trade secret, and/or commercially sensitive  
4 information are likely to be disclosed or produced during the course of discovery, initial  
5 disclosures, and supplemental disclosures in this case and request that the Court enter this  
6 Order setting forth the conditions for treating, obtaining, and using such information.

7 Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, the Court finds good  
8 cause for the following Agreed Protective Order Regarding the Disclosure and Use of  
9 Discovery Materials (“Order” or “Protective Order”).

10 1. **PURPOSES AND LIMITATIONS**

11 (a) Protected Material designated under the terms of this Protective Order shall  
12 be used by a Receiving Party solely for this case or as permitted by the Cross-Use Provision  
13 herein, and shall not be used directly or indirectly for any other purpose whatsoever. Nothing in  
14 this Order shall be construed as authorizing Plaintiffs to share any Protected Material with any  
15 defendant not named to the above-captioned case as of the date of execution of this Order.

16 (b) The Parties acknowledge that this Order does not confer blanket  
17 protections on all disclosures during discovery, or in the course of making initial or supplemental  
18 disclosures under Rule 26(a). Designations under this Order shall be made with care and shall not  
19 be made absent a good faith belief that the designated material satisfies the criteria set forth  
20 below. If it comes to a Producing Party’s attention that designated material does not qualify for  
21 protection at all, or does not qualify for the level of protection initially asserted, the Producing  
22 Party must promptly notify all other Parties that it is withdrawing or changing the designation.

23 2. **DEFINITIONS**

24 (a) “Discovery Material” means all items or information, including from any  
25 non-party, regardless of the medium or manner generated, stored, or maintained (including,  
26 among other things, testimony, transcripts, or tangible things) that are produced, disclosed, or  
27 generated in connection with discovery or Rule 26(a) disclosures in this case.

1 (b) "Outside Counsel" means (i) outside counsel who appear on the pleadings  
2 as counsel for a Party and (ii) partners, associates, and staff of such counsel to whom it is  
3 reasonably necessary to disclose the information for this litigation.

4 (c) "In-house Counsel" means attorneys who are employees of a Party and are  
5 working on this litigation, and includes supporting personnel employed by those counsel, such as  
6 paralegals, but specifically excludes any inventor of a Patent-in-suit.

7 (d) "Patent-in-suit" means U.S. Patent No. 7,587,207.

8 (e) "Party" means any party to this case as of the date of execution of this  
9 Order, including all of its officers, directors, employees, consultants, retained experts, and  
10 Outside Counsel and their support staff.

11 (f) "Producing Party" means any Party or non-party that discloses or produces  
12 any Discovery Material in this case.

13 (g) "Protected Material" means any Discovery Material that is designated as  
14 "CONFIDENTIAL," "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY," or  
15 "HIGHLY CONFIDENTIAL – SOURCE CODE," as provided for in this Order. Protected  
16 Material shall not include: (i) advertising materials that have been actually published or publicly  
17 disseminated; and (ii) materials that show on their face they have been disseminated to the public.

18 (h) "Receiving Party" means any Party who receives Discovery Material from  
19 a Producing Party.

20 (i) "Source Code" means computer code, scripts, assembly code, binaries,  
21 object code, source code listings and descriptions of source code, object code listings and  
22 descriptions of object code, netlists, Hardware Description Language (HDL) or Register Transfer  
23 Level (RTL) files that describe the hardware design of any ASIC or other chip, mask data design  
24 and fabrication computer files stored in a "GDS" or related file format, process-flow documents  
25 related to the fabrication of circuit boards, and other documents that provide the same definition  
26 or detailed description of the algorithms or structures of software or hardware designs.

27 3. **COMPUTATION OF TIME**

28 The computation of any period of time prescribed or allowed by this Order shall be

1 governed by the provisions for computing time set forth in Federal Rule of Civil Procedure 6.

2 4. **SCOPE**

3 (a) The protections conferred by this Order cover not only Discovery Material  
4 governed by this Order as addressed herein, but also any information copied or extracted  
5 therefrom, as well as all copies, excerpts, summaries, or compilations thereof, plus testimony,  
6 conversations, or presentations by Parties or their counsel in Court or in other settings that might  
7 reveal Protected Material.

8 (b) Nothing in this Protective Order shall prevent or restrict a Producing  
9 Party's own disclosure or use of its own Protected Material for any purpose, and nothing in this  
10 Order shall preclude any Producing Party from showing its Protected Material to an individual  
11 who prepared the Protected Material.

12 (c) Nothing in this Order shall be construed to prejudice any Party's right to  
13 use any Protected Material in Court or in any Court filing with the written consent of the  
14 Producing Party or by order of the Court.

15 (d) This Order is without prejudice to the right of any Party to seek further or  
16 additional protection of any Discovery Material or to modify this Order in any way, including,  
17 without limitation, an order that certain matter not be produced at all.

18 5. **DURATION**

19 Even after the termination of this case, the confidentiality obligations imposed by  
20 this Order shall remain in effect until a Producing Party agrees otherwise in writing or a Court  
21 order otherwise directs.

22 6. **ACCESS TO AND USE OF PROTECTED MATERIAL**

23 (a) **Basic Principles.** All Protected Material shall be used solely for this case  
24 or any related appellate proceeding, and not for any other purpose whatsoever, including without  
25 limitation any other litigation, patent prosecution or acquisition, patent reexamination, reissue,  
26 *inter partes* review, covered business method review, or other post-grant review proceedings, or  
27 any business or competitive purpose or function. Protected Material shall not be distributed,  
28 disclosed or made available to anyone except as expressly provided in this Order.

1 (b) Patent Prosecution Bar. Absent the written consent of the Producing Party,  
2 any person employed by, related to, or representing Plaintiffs who is permitted to and in fact  
3 receives any of Defendant's materials designated "HIGHLY CONFIDENTIAL – ATTORNEY'S  
4 EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE CODE" and directed to technical  
5 information relevant to the case, but excluding financial data or non-technical business  
6 information (collectively, "HIGHLY SENSITIVE TECHNICAL MATERIAL"), in accordance  
7 with this Order, shall not, on behalf of Plaintiffs or their acquirer, successor, predecessor, or other  
8 affiliate, prepare, prosecute, or assist in the preparation or prosecution of any patent application  
9 relating to the subject matter of the asserted patent (communications systems and methods  
10 implementing beacons to deliver data between devices) and corresponding to the produced  
11 technical information before any foreign or domestic agency, including the United States Patent  
12 and Trademark Office. To ensure compliance with the purpose of this provision, each party shall  
13 create an "Ethical Wall" between those persons with access to HIGHLY SENSITIVE  
14 TECHNICAL MATERIAL in accordance with this Order, and any individuals who, on behalf of  
15 Plaintiffs or their acquirer, successor, predecessor, or other affiliate, prepare, supervise, or assist  
16 in the preparation or prosecution of any patent application relating to the accused functionalities  
17 as enumerated above. These prohibitions shall not preclude Plaintiffs' litigation counsel from  
18 participating in any *inter partes* review proceedings. However, if and when claim amendments  
19 are considered in such an *inter partes* review, Plaintiffs' litigation counsel participating in that  
20 *inter partes* review must at that time either end their involvement in that *inter partes* proceeding  
21 or request leave of court to continue their participation in that proceeding. Litigation counsel who  
22 are the subject of such a request shall not provide input on any proposed claim amendments while  
23 the motion for leave is pending, and the Producing Party will agree to reasonable measures to  
24 expedite consideration of that motion (such as an expedited briefing schedule that allows for at  
25 least one week for the filing of an opposition). If leave of court is granted, then Plaintiffs'  
26 litigation counsel may continue to represent Plaintiffs in the litigation and the *inter partes*  
27 proceeding at issue, even though amendments are considered. If leave is denied, then those  
28 counsel with access to HIGHLY SENSITIVE TECHNICAL MATERIALS shall withdraw from

1 representation in, and shall not provide any input concerning, that *inter partes* review. The  
2 prohibitions of this paragraph shall begin when the HIGHLY SENSITIVE TECHNICAL  
3 MATERIALS are first received by the affected individual, and shall end one year after the  
4 settlement and/or dismissal of the Producing Party Defendant from this action or the final non-  
5 appealable termination of this action.

6 (c) Patent Acquisition Bar. Absent the written consent of the Producing Party,  
7 any person employed by, related to, or representing Plaintiffs who is permitted to and in fact  
8 receives any of Defendant's materials designated "HIGHLY CONFIDENTIAL – ATTORNEY'S  
9 EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE CODE" and directed to technical  
10 information relevant to the case, but excluding financial data or non-technical business  
11 information (collectively, "HIGHLY SENSITIVE TECHNICAL MATERIAL"), in accordance  
12 with this Order, shall not advise, counsel, participate, or assist in the acquisition of any patents or  
13 patent applications that (1) relate to the subject matter of the asserted patent in this case; or (2)  
14 relate to the subject matter of the HIGHLY SENSITIVE TECHNICAL MATERIAL that such  
15 individual reviewed. For the avoidance of doubt, the "acquisition" of patents under this section  
16 includes any analysis or evaluation of patents for the purposes of evaluating whether, or for what  
17 price, to acquire them. These prohibitions shall begin when the HIGHLY SENSITIVE  
18 TECHNICAL MATERIALS are first received by the affected individual, and shall end one year  
19 after the settlement or dismissal of the Producing Party Defendant from this action or the final  
20 non-appealable termination of this action.

21 (d) Secure Storage, No Export. Protected Material must be stored and  
22 maintained by a Receiving Party at a location in the United States and in a secure manner that  
23 ensures that access is limited to the persons authorized under this Order. Materials designated  
24 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL –  
25 SOURCE CODE" produced by Defendant shall not be taken or reviewed outside the United  
26 States unless expressly agreed to in writing by the Producing Party. If a deposition of a  
27 Producing Party's employee or 30(b)(6) designee occurs outside the United States, that Producing  
28 Party's Protected Materials may be taken outside the United States solely for purposes of their use

1 at that deposition. Any materials designated “HIGHLY CONFIDENTIAL – SOURCE CODE”  
2 are subject to the restrictions in paragraph 11(c)(ix).

3 (e) Legal Advice Based on Protected Material. Nothing in this Protective  
4 Order shall be construed to prevent counsel from advising their clients with respect to this case  
5 based in whole or in part upon Protected Materials, provided counsel does not disclose the  
6 Protected Material itself except as provided in this Order.

7 (f) Limitations. Nothing in this Order shall restrict in any way a Producing  
8 Party’s use or disclosure of its own Protected Material. Nothing in this Order shall restrict in any  
9 way the use or disclosure of Discovery Material by a Receiving Party: (i) that is or has become  
10 publicly known through no fault of the Receiving Party; (ii) that is lawfully acquired by or known  
11 to the Receiving Party independent of the Producing Party; (iii) previously produced, disclosed  
12 and/or provided by the Producing Party to the Receiving Party or a non-party without an  
13 obligation of confidentiality and not by inadvertence or mistake; (iv) with the consent of the  
14 Producing Party; or (v) pursuant to order of the Court. However, if the accuracy of information is  
15 confirmed only through the review of Protected Material, then the information shall not be  
16 considered to be publicly known. For example, unsubstantiated media speculations or rumors  
17 that are later confirmed to be accurate through access to Protected Material are not “publicly  
18 known” information. Such information is explicitly included in the definition of “Protected  
19 Material” set forth in Paragraph 2(g) above.

20 (g) Cross-Use Provision. Any Discovery Materials that have been produced or  
21 generated or will be produced or generated by any Producing Party in this case or any of the  
22 following cases currently pending in this District (including deposition testimony) shall, subject  
23 to the provisions set forth below, be deemed to have been produced in each of the following cases  
24 currently pending in this District: 19-cv-1691, 19-cv-1692, 19-cv-1693, 19-cv-1694, 19-cv-1695,  
25 19-cv-1697, 19-cv-1904 and 19-cv-1929. This Cross-Use Provision is subject to the following  
26 limitations:

- 27 (1) Any material subject to this provision shall retain the  
28 confidentiality designation provided by the Producing Party,

1 and shall be subject to the protections set forth in this Order  
2 and any additional protections set forth in any Protective Order  
3 entered in the Cross-Use Case or Cases in which the document  
4 is sought to be used.

5 (2) Access to material under this provision is limited to outside  
6 counsel of record in the Cross-Use Case or Cases in which the  
7 document is sought to be used, together with individuals  
8 entitled to access documents bearing the relevant  
9 confidentiality designation under a Protective Order entered in  
10 such Cross-Use Case or Cases.

11 (3) The Cross-Use Provision shall not apply to Discovery Material  
12 labeled “HIGHLY CONFIDENTIAL – SOURCE CODE.”

13 (4) Nothing in this Cross-Use Provision shall be construed as  
14 authorizing Plaintiffs to share any Protected Material with any  
15 defendant not named in the above-captioned case as of the date  
16 of execution of this Order.

17  
18 7. **DESIGNATING PROTECTED MATERIAL**

19 (a) Available Designations. Any Producing Party may designate Discovery  
20 Material with any of the following designations, provided that it meets the requirements for such  
21 designations as provided for herein: “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL -  
22 ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL - SOURCE CODE.”

23 (b) Written Discovery and Documents and Tangible Things. Written  
24 discovery, documents (which include “electronically stored information,” as that phrase is used in  
25 Federal Rule of Civil Procedure 34), and tangible things that meet the requirements for the  
26 confidentiality designations listed in Paragraph 7(a) may be so designated by placing the  
27 appropriate designation on every page of the written material prior to production. For digital files  
28 being produced, the Producing Party may mark each viewable page or image with the appropriate



1 designation, and mark the medium, container, and/or communication in which the digital files  
2 were contained. In the event that original documents are produced for inspection, the original  
3 documents shall be presumed “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”  
4 during the inspection and re-designated, as appropriate during the copying process.

5 (c) Native Files. Where electronic files and documents are produced in native  
6 electronic format, such electronic files and documents shall be designated for protection under  
7 this Order by appending to the file names or designators information indicating whether the file  
8 contains “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY” or  
9 “HIGHLY CONFIDENTIAL - SOURCE CODE,” material, or the Producing Party shall use any  
10 other reasonable method for so designating Protected Materials produced in electronic format.  
11 When electronic files or documents are printed for use at deposition, in a Court proceeding, or for  
12 provision in printed form to an expert or consultant pre-approved pursuant to Paragraph 12, the  
13 Party printing the electronic files or documents shall affix a legend to the printed document  
14 corresponding to the designation of the Designating Party and including the production number  
15 and designation associated with the native file. No one shall seek to use in this litigation a .tiff,  
16 .pdf, or other image format version of a document produced in native file format without first (1)  
17 providing a copy of the image format version to the Producing Party so that the Producing Party  
18 can review the image to ensure that no information has been altered, and (2) obtaining the consent  
19 of the Producing Party, which consent shall not be unreasonably withheld.

20 (d) Depositions and Testimony. Parties or testifying persons or entities may  
21 designate depositions and other testimony with the appropriate designation by indicating on the  
22 record at the time the testimony is given or by sending written notice of which portions of the  
23 transcript of the testimony are so designated within thirty days of receipt of the transcript of the  
24 testimony. If no indication on the record is made, all information disclosed during a deposition  
25 shall be deemed “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” until the time  
26 within which it may be appropriately designated as provided for herein has passed. Any Party  
27 that wishes to disclose the transcript, or information contained therein, may provide written notice  
28 of its intent to treat the transcript as non-confidential, after which time, any Party that wants to

1 maintain any portion of the transcript as confidential must designate the confidential portions  
2 within seventeen days, absent written agreement by the parties for additional time, or else the  
3 transcript may be treated as non-confidential. Any Protected Material that is used in the taking of  
4 a deposition shall remain subject to the provisions of this Protective Order, along with the transcript  
5 pages of the deposition testimony dealing with such Protected Material. In such cases the court  
6 reporter shall be informed of this Protective Order and shall be required to operate in a manner  
7 consistent with this Protective Order. In the event the deposition is videotaped, the original and  
8 all copies of the videotape shall be marked by the video technician to indicate that the contents of  
9 the videotape are subject to this Protective Order, substantially along the lines of “This videotape  
10 contains confidential testimony used in this case and is not to be viewed or the contents  
11 thereof to be displayed or revealed except pursuant to the terms of the operative Protective  
12 Order in this matter or pursuant to written stipulation of the parties.” Counsel for any  
13 Producing Party shall have the right to exclude from oral depositions, other than the deponent,  
14 deponent’s counsel and the reporter and videographer (if any), any person who is not  
15 authorized by this Protective Order to receive or access Protected Material based on the  
16 designation of such Protected Material. Such right of exclusion shall be applicable only  
17 during periods of examination or testimony regarding such Protected Material.

18           8.       **DISCOVERY MATERIAL DESIGNATED AS “CONFIDENTIAL”**

19                   (a)     A Producing Party may designate Discovery Material as  
20 “CONFIDENTIAL” if it contains or reflects confidential, proprietary, and/or commercially  
21 sensitive information.

22                   (b)     Unless otherwise ordered by the Court, Discovery Material designated as  
23 “CONFIDENTIAL” may be disclosed only to the following:

24                           (i)     The Receiving Party’s Outside Counsel, such counsel’s immediate  
25 paralegals and staff, and any copying or clerical litigation support services working at the  
26 direction of such counsel, paralegals, and staff;

27                           (ii)    Not more than three representatives of the Receiving Party who are  
28 officers or employees of the Receiving Party, who may be, but need not be, In-house Counsel for

1 the Receiving Party, as well as their immediate paralegals and staff, to whom disclosure is  
2 reasonably necessary for this case, provided that: (a) each such person has agreed to be bound  
3 by the provisions of the Protective Order by signing a copy of Exhibit A; and (b) no  
4 unresolved objections to such disclosure exist after proper notice has been given to all Parties  
5 as set forth in Paragraph 12 below;

6 (iii) Any outside expert or consultant retained by the Receiving Party to  
7 assist in this action, provided that disclosure is only to the extent necessary to perform such  
8 work; and provided that: (a) such expert or consultant has agreed to be bound by the provisions  
9 of the Protective Order by signing a copy of Exhibit A; (b) such expert or consultant is not a  
10 current officer, director, board member, or employee of a Party or of a competitor of a Party, nor  
11 anticipated at the time of retention to become an officer, director, board member, or employee of  
12 a Party or of a competitor of a Party; (c) such expert or consultant accesses the materials in the  
13 United States only, and does not transport them to or access them from any foreign jurisdiction,  
14 except that, for example, an expert or consultant may transport Protected Material outside of the  
15 United States for the purpose of providing support to outside counsel of a party deposing  
16 employees of another party or a third party resident overseas; and (d) no unresolved objections to  
17 such disclosure exist after proper notice has been given to all Parties as set forth in Paragraph 12  
18 below. If an unresolved objection to such disclosures exists, the Parties agree to promptly confer  
19 and use good faith to resolve any such objection;

20 (iv) Court reporters, stenographers, and videographers retained to record  
21 testimony taken in this action;

22 (v) The Court, jury, and Court personnel;

23 (vi) Graphics, translation, design, and/or trial consulting personnel,  
24 having first agreed to be bound by the provisions of the Protective Order by signing a copy of  
25 Exhibit A;

26 (vii) Mock jurors retained by a trial consulting firm in connection with  
27 this litigation having first signed an undertaking or agreement agreeing not to publicly disclose  
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1 Protected Material and to keep any information concerning Protected Material confidential to the  
2 same degree as required by this Protective Order;

3 (viii) Any mediator who is assigned to hear this matter, and his or her  
4 staff, subject to their agreement to maintain confidentiality to the same degree as required by this  
5 Protective Order; and

6 (ix) Any other person with the prior written consent of the Producing  
7 Party.

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9 9. **DISCOVERY MATERIAL DESIGNATED AS “HIGHLY**  
**CONFIDENTIAL – ATTORNEYS’ EYES ONLY”**

10  
11 (a) A Producing Party may designate Discovery Material as “HIGHLY  
12 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” if it contains or reflects information that is  
13 extremely confidential and/or sensitive in nature and the Producing Party reasonably believes that  
14 the disclosure of such Discovery Material is likely to cause economic harm or significant  
15 competitive disadvantage to the Producing Party. The Parties agree that the following  
16 information, if non-public, shall be presumed to merit the “HIGHLY CONFIDENTIAL –  
17 ATTORNEYS’ EYES ONLY” designation: trade secrets, pricing information, financial data,  
18 sales information, sales or marketing forecasts or plans, business plans, sales or marketing  
19 strategy, product development information, engineering documents, testing documents, employee  
20 information, and other non-public information of similar competitive and business sensitivity.

21 (b) Unless otherwise ordered by the Court, Discovery Material designated as  
22 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” may be disclosed only to:

23 (i) The Receiving Party’s Outside Counsel, provided that such Outside  
24 Counsel is not involved in competitive decision-making on behalf of a Party or a competitor of a  
25 Party, and such Outside Counsel’s immediate paralegals and staff, and any copying or clerical  
26 litigation support services working at the direction of such counsel, paralegals, and staff; and  
27  
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1 (ii) The individuals listed in paragraphs 8(b)(iii-ix), provided that such  
2 individuals are not involved in competitive decision-making on behalf of a Party or a competitor  
3 of a Party.

4 10. **DISCOVERY MATERIAL DESIGNATED AS “HIGHLY CONFIDENTIAL**  
5 **- SOURCE CODE”**

6 (a) To the extent production of Source Code becomes necessary to the  
7 prosecution or defense of the case, a Producing Party may designate Source Code as “HIGHLY  
8 CONFIDENTIAL - SOURCE CODE” if it comprises or includes confidential, proprietary, and/or  
9 trade secret Source Code.

10 (b) Nothing in this Order shall be construed as a representation or admission  
11 that Source Code is properly discoverable in this action, or to obligate any Party to produce any  
12 Source Code.

13 (c) Unless otherwise ordered by the Court, Discovery Material designated as  
14 “HIGHLY CONFIDENTIAL - SOURCE CODE” shall be subject to the provisions set forth in  
15 Paragraph 11 below, and may be disclosed, subject to Paragraph 11 below, solely to:

16 (i) The Receiving Party’s Outside Counsel, provided that such Outside  
17 Counsel is not involved in competitive decision-making on behalf of a Party or a competitor of a  
18 Party, and such Outside Counsel’s immediate paralegals and staff, and any copying or clerical  
19 litigation support services working at the direction of such counsel, paralegals, and staff; and

20 (ii) The individuals listed in paragraphs 8(b)(iii-vi and viii-ix), provided  
21 that such individuals are not involved in competitive decision-making on behalf of a Party or a  
22 competitor of a Party.

23 11. **DISCLOSURE AND REVIEW OF SOURCE CODE**

24 (a) Any Source Code that is produced by Plaintiffs shall be made available for  
25 inspection in electronic format at the Boston office of its Outside Counsel, Prince Lobel Tye LLP,  
26 or any other location mutually agreed by the Parties. Any Source Code that is produced by  
27 Defendant will be made available for inspection at the East Palo Alto, California office of its  
28 outside counsel, DLA Piper LLP (US). Source Code will be made available for inspection

1 between the hours of 8:00 a.m. and 7:30 p.m. on business days (i.e., weekdays that are not  
2 Federal holidays). The Parties will be reasonable in accommodating reasonable requests to alter  
3 these hours so long as reasonable advanced notice, and in no event less than three business days'  
4 notice, of any such reasonable requests is provided.

5 (b) Prior to the first inspection of any requested Source Code, the parties agree  
6 to meet and confer regarding the review and production of Source Code if requested by either  
7 Party. Further, the Receiving Party shall provide ten days' notice for its initial review of any  
8 Source Code that it wishes to inspect. The Receiving Party shall provide two days' notice prior to  
9 any additional inspections.

10 (c) Source Code that is designated "HIGHLY CONFIDENTIAL – SOURCE  
11 CODE" shall be produced for inspection and review subject to the following provisions,  
12 unless otherwise agreed by the Producing Party:

13 (i) All Source Code shall be made available by the Producing Party to  
14 the Receiving Party's Outside Counsel and/or experts in a secure room on a secured computer  
15 without Internet access or network access to other computers and on which all access ports have  
16 been disabled, as necessary and appropriate to prevent and protect against any unauthorized  
17 copying, transmission, removal, or other transfer of any Source Code outside or away from the  
18 computer on which the Source Code is provided for inspection (the "Source Code Computer" in  
19 the "Source Code Review Room"). The Source Code Computer shall be password protected.  
20 The Producing Party shall produce Source Code in computer searchable format on the Source  
21 Code Computer and in the file format in which the Source Code is kept in the ordinary course of  
22 the Producing Party's business. The Producing Party shall provide the Receiving Party with  
23 information explaining how to start, log on to, and operate the stand-alone computer(s) in order to  
24 access the produced Source Code.

25 (ii) The Producing Party shall install tools that are sufficient for  
26 viewing and searching the code produced, on the platform produced, if such tools exist and are  
27 presently used in the ordinary course of the Producing Party's business. The Producing Party  
28 shall include the review tool "UNDERSTAND" on the secured computer. The Receiving Party's

1 outside counsel and/or experts may request that additional commercially available software tools  
2 for viewing and searching Source Code be installed on the secured computer, provided, however,  
3 that (a) the Receiving Party possesses an appropriate license to such software tools; (b) the  
4 Producing Party approves such software tools; and (c) such software tools can execute on the  
5 secured computer and are reasonably necessary for the Receiving Party to perform its review of  
6 the Source Code consistent with all of the protections herein. The Receiving Party must provide  
7 the Producing Party with a CD or DVD (or other appropriate medium) containing such licensed  
8 software tool(s) at least seven days in advance of the date upon which the Receiving Party wishes  
9 to have the additional software tools available for use on the Source Code Computer.

10 (iii) No recordable media or recordable devices, including without  
11 limitation sound recorders, personal digital assistants (PDAs), cellular telephones, peripheral  
12 equipment, cameras, voice recorders, Dictaphones, telephone jacks, CDs, DVDs, or drives of any  
13 kind (e.g., USB memory sticks and portable hard drives), shall be permitted into the Source Code  
14 Review Room. No non-electronic devices capable of similar functionality shall be permitted in  
15 the Source Code Review Room.

16 (iv) Non-Networked Computer for Note-Taking Purposes Only: The  
17 Receiving Party's Outside Counsel and/or experts shall be entitled to take notes relating to the  
18 Source Code but may not copy or transcribe the Source Code or any portion thereof into the  
19 notes. The Receiving Party's expert(s) and/or consultant may use a single Notetaking Computer  
20 in the review room for the sole purpose of taking and reviewing his or her notes. The Notetaking  
21 Computer shall be provided to the Receiving Party by the Producing Party at the beginning of the  
22 first inspection, and shall have commercially reasonable processing power and storage facilities.  
23 The Receiving Party may maintain the Notetaking Computer in its possession until ninety days  
24 following final termination of this matter, after which it must destroy the Notetaking Computer or  
25 return it to the Producing Party. The Receiving Party shall treat the Notetaking Computer, and  
26 any notes on it, with the same precautions as are required for printed copies of source code. The  
27 Producing Party shall install on the Notetaking Computer reasonable word-processing software as  
28 requested by the Receiving Party. The WiFi, Bluetooth, and camera functionalities on the

1 Notetaking Computer will be permanently disabled. The taking of photographs or video shall not  
2 be permitted in the Source Code Review Room. The Producing Party may inspect the Receiving  
3 Party's Notetaking Computer to be used in the Source Code Review Room, but solely to ensure  
4 that it is the same Notetaking Computer previously provided. Such inspection shall be conducted  
5 in the Receiving Party's presence and should not count against Receiving Party's review time.  
6 The Producing Party may not look at any notes or files on the Notetaking Computer at any time.  
7 The Receiving Party shall not install or insert any added functionality whatsoever as to the  
8 Notetaking computer, and shall not attempt to connect the Notetaking Computer to any network.

9 (v) The Producing Party may visually monitor the activities of the  
10 Receiving Party's representatives during any Source Code review, but only to ensure that no  
11 unauthorized electronic records of the Source Code and no information concerning the Source  
12 Code are being created or transmitted in any way. Any observer used by the Producing Party  
13 may monitor the Receiving Party's representatives during the Source Code review through a glass  
14 partition and so as to refrain from overhearing a conversation (in order that the Receiving Party's  
15 representatives can discuss the Source Code in the course of their review). During the Receiving  
16 Party's review of the Source Code, the Producing Party shall not otherwise interfere with the  
17 Receiving Party's review of the Source Code and shall not be permitted access to the Receiving  
18 Party's notes, work product, or discussions inside the review room or following each day's  
19 inspection of the Source Code. During the Source Code review, the Producing Party agrees to  
20 provide a "break-out" room for the Receiving Party's Source Code reviewer(s) to make phone  
21 calls and work. To the extent such a break-out room is not reasonably available, the Producing  
22 Party agrees to so notify the Receiving Party at least three business days in advance of any day on  
23 which the Receiving Party's Source Code reviewers are expected to inspect the Source Code. No  
24 copies of all or any portion of the Source Code may leave the Source Code Review Room  
25 except as otherwise provided herein. Further, no other written or electronic record of the Source  
26 Code is permitted except as otherwise provided herein. The Receiving Party may request paper  
27 copies of limited portions of source code that are reasonably necessary for the preparation of  
28 court filings, pleadings, expert reports, or other papers, and only to the extent necessary for use in



1 this action. The Receiving Party shall not request printing of Source Code in order to review  
2 blocks of Source Code elsewhere in the first instance, i.e., as an alternative to reviewing that  
3 Source Code electronically on the Source Code Computer, as the Parties acknowledge and agree  
4 that the purpose of the protections herein would be frustrated by printing portions of code for  
5 review and analysis elsewhere, and printing is permitted only when necessary to prepare Court  
6 filings or pleadings or other papers (including a testifying expert's expert report). The Producing  
7 Party shall number, copy, and label "HIGHLY CONFIDENTIAL – SOURCE CODE" any pages  
8 requested by the Receiving Party. Within three business days, the Producing Party shall either (i)  
9 provide one copy set of such pages to the Receiving Party, or (ii) inform the Requesting Party that  
10 it objects that the printed portions are excessive and/or not done for a permitted purpose. If, after  
11 conferring within one business day of any objections, the Producing Party and the Receiving  
12 Party cannot resolve the objection, the <sup>parties</sup> Producing Party shall within seven days of the conference  
13 submit a joint discovery dispute letter in compliance with Judge DeMarchi's Standing Order for  
14 ~~move the Court for a Protective Order and shall agree to expedited briefing of the motion, failing~~  
15 ~~any of which, the Producing Party shall provide one copy set of the requested pages to the~~  
16 ~~Receiving Party within two days.~~<sup>†</sup> The printed pages shall constitute part of the Source Code  
17 produced by the Producing Party in this action. Access to the Source Code Computer shall be  
18 limited to seven Outside Counsel representing the Reviewing Party and seven outside consultants  
19 or experts retained by the Reviewing Party. All persons viewing Source Code shall sign on each  
20 day they view Source Code a log that will include the names of persons who enter the Source  
21 Code Review Room to view the Source Code and when they enter and depart. The Producing  
22 Party shall be entitled to a copy of the log upon seven days' advance notice to the Receiving  
23 Party.

23 (vi) Unless otherwise agreed in advance by the Parties in writing,  
24 following each day on which inspection is done under this Order, the Receiving Party's Outside  
25

26 <sup>†</sup> Both Parties agree that the briefing period and page limits for such motions for a protective order shall be as  
27 follows: (1) Producing Party shall file the motion by 5PM Pacific time no later than seven days after the conference  
28 with an agreed motion for expedited briefing as set forth herein; (2) Receiving Party's Response shall fall due within  
seven days. Both the Producing and Receiving Party further agree that briefing for such motions shall be limited to  
no more than five pages for the motion and five pages for the response to the motion. The parties further agree that  
neither reply nor sur-reply briefs shall be filed in connection with such motions.

1 Counsel and/or experts shall remove all notes, documents, and all other materials from the Source  
2 Code Review Room and shall maintain any such notes in a manner that prevents duplication of or  
3 unauthorized access to the Source Code. Any such notes must be marked on each page with the  
4 designation – “HIGHLY CONFIDENTIAL – SOURCE CODE.” The Producing Party shall not be  
5 responsible for any items left in the Source Code Review Room, including but not limited to  
6 preserving the confidentiality of any such items, following each inspection session. Proper  
7 identification of all authorized persons shall be provided prior to any access to the Source Code  
8 Review Room or the Source Code Computer. Proper identification requires showing, at a  
9 minimum, a photo identification card sanctioned by the government of any State of the United  
10 States, by the government of the United States, or by the nation state of the authorized person’s  
11 current citizenship. Access to the Source Code Review Room or the Source Code Computer may  
12 be denied, at the discretion of the supplier, to any individual who fails to provide proper  
13 identification.

14 (vii) Other than as provided above, the Receiving Party will not copy,  
15 remove, or otherwise transfer any Source Code from the Source Code Computer including,  
16 without limitation, copying, removing, or transferring the Source Code onto any recordable media  
17 or recordable device. The Receiving Party will not transmit any Source Code in any way from  
18 the Producing Party’s facilities or the offices of its Outside Counsel.

19 (viii) The Receiving Party’s Outside Counsel may make no more than  
20 four additional paper copies of any portions of the Source Code received from a Producing Party  
21 pursuant to Paragraph 11 not including copies attached to Court filings or for use at depositions  
22 (as indicated in Paragraph 11(c)(ix) below), and shall maintain a log of all paper copies of the  
23 Source Code. The Receiving Party’s Outside Counsel and any person receiving a copy of any  
24 Source Code shall maintain and store any paper copies of the Source Code at their offices in a  
25 manner that prevents duplication of or unauthorized access to the Source Code, including, without  
26 limitation, storing the Source Code in a locked room or cabinet at all times when it is not in use.  
27 No more than a total of fourteen individuals identified by the Receiving Party shall have access to  
28 the printed portions of Source Code (except insofar as such code appears in any Court filing or

expert report). Copies of Source Code that are marked as deposition exhibits shall not be provided to the Court Reporter or attached to deposition transcripts; rather, the deposition record will identify the exhibit by its production numbers. The Receiving Party may bring copies of the printed Source Code to the deposition unless the Producing Party notifies Receiving Party in advance of the deposition that the Producing Party will provide a Source Code computer at the deposition containing all source code, in computer-searchable format, previously produced by the Producing Party.<sup>2</sup> Further, the Receiving Party may bring to the deposition copies of any expert reports or pleadings containing source code, including any annotated copies of such documents containing source code.

(ix) Except as provided in this sub-paragraph, absent express written permission from the Producing Party, the Receiving Party may not create electronic images, or any other images, or make electronic copies of the Source Code from any paper copy of Source Code for use in any manner (including by way of example only, the Receiving Party may not scan the Source Code to a PDF or photograph the code) except in preparation for or in connection with: (i) filing (under seal) and service of papers, motions, and pleadings; (ii) expert reports; and (iii) a hearing or trial in this matter. Any such electronic copies shall be password protected and encrypted. Any such electronic copies shall be included in the log generated pursuant to this subsection. Access to such electronic copies of source code printouts, but not expert reports, will be limited to seven individuals, and such electronic copies are to be made strictly for the purposes of filings or hearings. Images or copies of Source Code shall not be included in correspondence between the Parties (references to production numbers shall be used instead), and shall be omitted from pleadings and other papers whenever possible. If a Party reasonably believes that it needs to submit a portion of Source Code as part of a filing with the Court, the Parties shall meet and confer as to how to make such a filing while protecting the confidentiality of the Source Code and such Source Code will not be filed absent agreement from the Producing Party that the confidentiality protections will be adequate. If a Producing Party agrees to produce an electronic

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<sup>2</sup> Such Source Code computer(s) for use during depositions must, at a minimum, meet the specifications of Paragraph (ii-v) above.

1 copy of all or any portion of its Source Code or provide written permission to the Receiving Party  
2 that an electronic or any other copy needs to be made for a Court filing, access to the Receiving  
3 Party's submission, communication, and/or disclosure of electronic files or other materials  
4 containing any portion of Source Code (paper or electronic) shall at all times be limited solely to  
5 individuals who are expressly authorized to view Source Code under the provisions of this Order.  
6 Where the Producing Party has provided the express written permission required under this  
7 provision for a Receiving Party to create electronic copies of Source Code, the Receiving Party  
8 shall maintain a log of all such electronic copies of any portion of Source Code in its possession  
9 or in the possession of its retained consultants, including the names of the reviewers and/or  
10 recipients of any such electronic copies, and the locations and manner in which the electronic  
11 copies are stored. Additionally, any such electronic copies must be labeled "HIGHLY  
12 CONFIDENTIAL - SOURCE CODE" as provided for in this Order.

13 12. **NOTICE OF DISCLOSURE**

14 (a) Prior to disclosing any Protected Material to any person described in  
15 Paragraphs 8(b)(iii) (referenced below as "Person"), the Party seeking to disclose such  
16 information shall provide the Producing Party with written notice that includes:

17 (i) the name of the Person;

18 (ii) an up-to-date curriculum vitae of the Person;

19 (iii) the present employer and title of the Person;

20 (iv) an identification of all of the Person's past and current employment and consulting  
21 relationships, including direct relationships and relationships through entities  
22 owned or controlled by the Person;

23 (v) a list of the cases in which the Person has testified at deposition or trial within the last  
24 five years; and

25 (vi) an identification of all pending patent applications on which the Person is named as an  
26 inventor, or in which the Person has any ownership interest.

27 Further, the Party seeking to disclose Protected Material shall provide such other  
28 information regarding the Person's professional activities reasonably requested by the Producing

1 Party for it to evaluate whether good cause exists to object to the disclosure of Protected Material  
2 to the outside expert or consultant. Any Party seeking to disclose Protected Material to more than  
3 a total of seven persons described in Paragraph 8(b)(iii) shall provide a written explanation  
4 alongside the Notice of Disclosure detailing the good faith basis for requesting disclosure to such  
5 additional person(s).

6 (b) Within ten days of receipt of the disclosure of the Person, the Producing  
7 Party or Parties may object in writing to the Person for good cause. In the absence of an  
8 objection at the end of the ten day period, the Person shall be deemed approved under this  
9 Protective Order. There shall be no disclosure of Protected Material to the Person prior to  
10 expiration of this ten day period. If the Producing Party objects to disclosure to the Person within  
11 such ten day period, the Parties shall meet and confer via telephone or in person within seven  
12 days following the objection and attempt in good faith to resolve the dispute on an informal basis.  
13 If the dispute is not resolved, the <sup>parties</sup> ~~Party objecting to the disclosure~~ will have seven days from the  
14 submit a joint letter brief in compliance with Judge DeMarchi's Standing Order for Civil Cases.  
15 date of the meet and confer to ~~seek relief from the Court~~. If relief is not sought from the Court  
16 within that time, the objection shall be deemed withdrawn. If relief is sought, designated  
17 materials shall not be disclosed to the Person in question until the Court resolves the objection.

18 (c) For purposes of this section, "good cause" shall include an objectively  
19 reasonable concern that the Person will use or disclose Discovery Materials in a way or ways that  
20 would violate one or more provisions contained in this Order, whether intentionally or  
21 inadvertently.

22 (d) Prior to receiving any Protected Material under this Order, the Person must  
23 execute a copy of the "Agreement to Be Bound by Protective Order" (Exhibit A hereto) and serve  
24 it on all Parties.

25 (e) An initial failure to object to a Person under this Paragraph 12 shall not  
26 preclude the non-objecting Party from later objecting to continued access by that Person for good  
27 cause. If an objection is made, the Parties shall meet and confer via telephone or in person within  
28 three days following the objection and attempt in good faith to resolve the dispute informally. If  
the dispute is not resolved, the <sup>parties</sup> ~~Party objecting to the disclosure~~ will have three days from the date

submit a joint discovery letter brief in compliance with Judge DeMarchi's Standing Order for Civil Cases. of the meet and confer to ~~seek relief from the Court.~~ The designated Person may continue to have access to information that was provided to such Person prior to the date of the objection. If a later objection is made, no further Protected Material shall be disclosed to the Person until the Court resolves the matter or the Producing Party withdraws its objection. Notwithstanding the foregoing, ~~if the Producing Party fails to move for a protective order~~ <sup>no joint discovery letter brief is filed</sup> within three days after the meet and confer, further Protected Material may thereafter be provided to the Person.

13. **CHALLENGING DESIGNATIONS OF PROTECTED MATERIAL**

(a) A Party shall not be obligated to challenge the propriety of any designation of Discovery Material under this Order at the time the designation is made, and a failure to do so shall not preclude a subsequent challenge thereto.

(b) Any challenge to a designation of Discovery Material under this Order shall be written, shall be served on Outside Counsel for the Producing Party, shall particularly identify the documents or information that the Receiving Party contends should be differently designated, and shall state the grounds for the objection. Thereafter, further protection of such material shall be resolved in accordance with the following procedures:

(i) The objecting Party shall have the burden of conferring either in person, in writing, or by telephone with the Producing Party claiming protection (as well as any other interested party) in a good faith effort to resolve the dispute. The Producing Party shall have the burden of justifying the disputed designation;

(ii) ~~Failing agreement, the Receiving Party may bring a motion to the Court for a ruling that the Discovery Material in question is not entitled to the status and protection of the Producing Party's designation.~~ <sup>the parties shall comply with the discovery dispute procedures outlined in Judge DeMarchi's Standing Order for Civil Cases.</sup> The Parties' entry into this Order shall not preclude or prejudice either Party from arguing for or against any designation, establish any presumption that a particular designation is valid, or alter the burden of proof that would otherwise apply in a dispute over discovery or disclosure of information;

(iii) Notwithstanding any challenge to a designation, the Discovery Material in question shall continue to be treated as designated under this Order until one of the following occurs: (a) the Party who designated the Discovery Material in question withdraws

1 such designation in writing; or (b) the Court rules that the Discovery Material in question is  
2 not entitled to the designation.

3 14. **SUBPOENAS OR COURT ORDERS**

4 If at any time documents containing Protected Information are requested or  
5 subpoenaed by any court, arbitral, administrative or legislative body, or are otherwise requested  
6 in discovery, the party receiving the request shall immediately give written notice thereof to every  
7 party whose Protected Information has been requested and to its counsel and shall copy Outside  
8 Counsel for the Parties on any such communication and shall provide each such Party with an  
9 opportunity to object to the production of such documents. If a Producing Party does not take  
10 steps to prevent disclosure of such documents within ten business days of the date written  
11 notice is given, the party to whom the referenced subpoena or request is directed may produce  
12 such documents only after written permission is granted, the Court has so Ordered, or the ten day  
13 period has lapsed, but shall take all reasonable measures to have such documents treated in  
14 accordance with terms of this Protective Order.

15 15. **FILING PROTECTED MATERIAL**

16 (a) Absent written permission from the Producing Party or a Court Order  
17 secured after appropriate notice to all interested persons, a Receiving Party may not file or  
18 disclose in the public record any Protected Material.

19 (b) Any Party that seeks to file under seal any Protected Material must comply  
20 with Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant to a court  
21 order authorizing the sealing of the specific Protected Material at issue. Pursuant to Civil Local  
22 Rule 79-5, a sealing order will issue only upon a request establishing that the Protected Material  
23 at issue is privileged, protectable as a trade secret, or otherwise entitled to protection under the  
24 law. If a Receiving Party's request to file Protected Material under seal pursuant to Civil Local  
25 Rule 79-5(e) is denied by the court, then the Receiving Party may file the Protected Material in  
26 the public record pursuant to Civil Local Rule 79-5(e)(2) unless otherwise instructed by the court.

27 16. **INADVERTENT DISCLOSURE OF PRIVILEGED MATERIAL**

28 (a) The inadvertent production by a Party of Discovery Material subject to the

1 attorney-client privilege, work-product protection, or any other applicable privilege or protection,  
2 despite the Producing Party's reasonable efforts to prescreen such Discovery Material prior to  
3 production, will not waive the applicable privilege and/or protection if a request for return of such  
4 inadvertently produced Discovery Material is made promptly after the Producing Party learns of  
5 its inadvertent production.

6 (b) Upon a request from any Producing Party who has inadvertently produced  
7 Discovery Material that it believes is privileged and/or protected, each Receiving Party shall  
8 immediately return such Protected Material or Discovery Material and all copies to the Producing  
9 Party, except for any pages containing privileged markings by the Receiving Party which shall  
10 instead be destroyed and certified as such by the Receiving Party to the Producing Party.

11 (c) Nothing herein shall prevent the Receiving Party from preparing a record for  
12 its own use containing the date, author, addresses, and topic of the inadvertently produced  
13 Discovery Material and such other information as is reasonably necessary to identify the Discovery  
14 Material and describe its nature to the Court in any <sup>discovery letter brief seeking</sup> ~~motion to compel~~ production of the Discovery  
15 Material.

16 17. **INADVERTENT FAILURE TO DESIGNATE PROPERLY**

17 (a) The inadvertent failure by a Producing Party to designate Discovery  
18 Material as Protected Material with one of the designations provided for under this Order shall  
19 not waive any such designation provided that the Producing Party notifies all Receiving Parties  
20 that such Discovery Material is protected under one of the categories of this Order within fourteen  
21 days of the Producing Party learning of the inadvertent failure to designate. The Producing Party  
22 shall reproduce the Protected Material with the correct confidentiality designation within seven  
23 days upon its notification to the Receiving Parties. Upon receiving the Protected Material with  
24 the correct confidentiality designation, the Receiving Parties shall return or securely destroy, at  
25 the Producing Party's option, all Discovery Material that was not designated properly.

26 (b) A Receiving Party shall not be in breach of this Order for any use of such  
27 Discovery Material before the Receiving Party receives such notice that such Discovery Material  
28 is protected under one of the categories of this Order. Once a Receiving Party has received



1 notification of the correct confidentiality designation for the Protected Material with the correct  
2 confidentiality designation, the Receiving Party shall treat such Discovery Material (subject to the  
3 exception in Paragraph 17(c) below) at the appropriately designated level pursuant to the terms of  
4 this Order.

5 (c) Notwithstanding the above, a subsequent designation of  
6 CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY  
7 CONFIDENTIAL – SOURCE CODE” shall apply on a going forward basis and shall not  
8 disqualify anyone who reviewed “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL –  
9 ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” materials  
10 while the materials were not marked “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
11 ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” from engaging in the activities set  
12 forth in Paragraph 6(b).

13 18. **INADVERTENT DISCLOSURE NOT AUTHORIZED BY ORDER**

14 (a) In the event of a disclosure of any Discovery Material pursuant to this  
15 Order to any person or persons not authorized to receive such disclosure under this Protective  
16 Order, the Party responsible for having made such disclosure, and each Party with knowledge  
17 thereof, shall immediately notify counsel for the Producing Party whose Discovery Material has  
18 been disclosed and provide to such counsel all known relevant information concerning the nature  
19 and circumstances of the disclosure. The responsible disclosing Party shall also promptly take all  
20 reasonable measures to retrieve the improperly disclosed Discovery Material and to ensure that no  
21 further or greater unauthorized disclosure and/or use thereof is made

22 (b) Unauthorized or inadvertent disclosure does not change the status of  
23 Discovery Material or waive the right to hold the disclosed document or information as Protected.

24 19. **FINAL DISPOSITION**

25 (a) Not later than ninety days after the Final Disposition of this case, each  
26 Party shall return all Discovery Material of a Producing Party to the respective Outside Counsel  
27 of the Producing Party or destroy such Material, at the option of the Producing Party. For  
28 purposes of this Order, “Final Disposition” occurs after an order, mandate, or dismissal finally

1 terminating all claims asserted against all Parties in each of these related cases with prejudice,  
2 including all appeals.

3 (b) All Parties that have received any such Discovery Material shall certify in  
4 writing that all such materials have been returned to the respective Outside Counsel of the  
5 Producing Party or destroyed. Notwithstanding the provisions for return of Discovery Material,  
6 Outside Counsel may retain one set of pleadings, correspondence and attorney and consultant  
7 work product (but not document productions) for archival purposes, but must return any  
8 pleadings, correspondence, and consultant work product that contain Source Code.

9 20. **DISCOVERY FROM EXPERTS OR CONSULTANTS**

10 (a) Drafts of reports of testifying experts, and reports and other written  
11 materials, including drafts, of consulting experts, shall not be discoverable.

12 (b) Reports and materials exempt from discovery under the foregoing  
13 Paragraph shall be treated as attorney work product for the purposes of this case and Protective  
14 Order.

15 21. **MISCELLANEOUS**

16 (a) Non-Party Use of this Order. The parties shall disclose this Protective  
17 Order to all non-parties producing information or material pursuant to a subpoena or Court order  
18 in these related cases. A non-party producing information or material voluntarily or pursuant to a  
19 subpoena or a court order may designate such material or information under this Protective Order,  
20 and shall be considered a Producing Party under this Protective Order. A non-party's use of this  
21 Protective Order to protect its confidential information does not entitle that non-party access to  
22 Protected Material produced by any Party.

23 (b) Right to Further Relief. Nothing in this Order abridges the right of any  
24 person to seek its modification by the Court in the future. By stipulating to this Order, the Parties  
25 do not waive the right to argue that certain material may require additional or different  
26 confidentiality protections than those set forth herein.

27 (c) Termination of Matter and Retention of Jurisdiction. The Parties agree that  
28 the terms of this Protective Order shall survive and remain in effect after the Final <sup>Disposition</sup> ~~Determination~~

1 in this matter. The Court shall retain jurisdiction for 90 days after the termination of the matter to  
2 hear and resolve any disputes arising out of this Protective Order.

3 (d) Successors. This Order shall be binding upon the Parties hereto, their  
4 attorneys, and their successors, executors, personal representatives, administrators, heirs, legal  
5 representatives, assigns, subsidiaries, divisions, employees, agents, retained consultants and  
6 experts, and any persons or organizations over which they have direct control.

7 (e) Right to Assert Other Objections. By stipulating to the entry of this  
8 Protective Order, no Party waives any right it otherwise would have to object to disclosing or  
9 producing any information or item. Similarly, no Party waives any right to object on any ground  
10 to use in evidence of any of the material covered by this Protective Order. This Order shall not  
11 constitute a waiver of the right of any Party to claim in these related actions or otherwise that any  
12 Discovery Material, or any portion thereof, is privileged or otherwise non-discoverable, or is not  
13 admissible in evidence in these related actions or any other proceeding.


14 (f) Burdens of Proof. Notwithstanding anything to the contrary above,  
15 nothing in this Protective Order shall be construed to change the burdens of proof or legal  
16 standards applicable in disputes regarding whether particular Discovery Material is confidential,  
17 which level of confidentiality is appropriate, whether disclosure should be restricted, and if so,  
18 what restrictions should apply.

19 (g) Modification by Court. This Order is subject to further Court order based  
20 upon public policy or other considerations, and the Court may modify this Order *sua sponte* in the  
21 interests of justice. The United States District Court for the Northern District of California is  
22 responsible for the interpretation and enforcement of this Order. All disputes concerning  
23 Protected Material, however designated, produced under the protection of this Order shall be  
24 resolved by the United States District Court for the Northern District of California.

25 PURSUANT TO STIPULATION, AS MODIFIED BY THE COURT,  
**SO ORDERED.**

26 ^

27 Dated: January 17, 2020

28   
Honorable Edward J. Davila Virginia K. DeMarchi  
United States District Court Judge  
Magistrate

-26-

**EXHIBIT A**

I, \_\_\_\_\_, acknowledge and declare that I have received a copy of the Protective Order (“Order”) in *Uniloc 2017 LLC . v. Apple Inc.*, United States District Court, Northern District of California, Civil Action No. 5:19-cv-1692-EJD. Having read and understood the terms of the Order, I agree to be bound by the terms of the Order and consent to the jurisdiction of said Court for the purpose of any proceeding to enforce the terms of the Order.

Name of individual: \_\_\_\_\_

Present occupation/job description: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Name of Company or Firm: \_\_\_\_\_

Address: \_\_\_\_\_

Dated: \_\_\_\_\_

\_\_\_\_\_  
**[SIGNATURE]**